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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
29250-000840/US

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On _____

Signature _____

Typed or printed name _____

Application Number
09/449,649

Filed
November 30, 1999

First Named Inventor
Joseph J. NAJDA et al.

Art Unit
2665

Examiner
Daniel J. Ryman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 35,416.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

Gary D. Yacura
Typed or printed name

703-668-8000
Telephone number

September 30, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph J. NAJDA et al.
Application No.: 09/449,649
Filed: November 30, 1999
Group: 2665
Examiner: Daniel J. Ryman
For: REVERSE STATISTICAL MULTIPLEXING TO ACHIEVE
EFFICIENT DIGITAL PACKAGING WITH LINK PROTECTION

Attorney Docket No.: 29250-000840/US

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314
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September 30, 2005

REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Dear Sir:

Further to the concurrent filing of the attached Notice of Appeal, the following remarks are submitted in connection with the above-identified patent application under the Pilot Program for Pre-Appeal Brief Conference (Off. Gaz. Patent & Trademark Office, Vol. 1296, No. 2, July 12, 2005).

Claim 27-43 are pending in the current application. Claims 27 and 38 are independent claims.

Rejection For Which Conference Is Requested

A Pre-Appeal Brief Conference is requested to review the rejection of claim 27-43 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,317,414 to Naohiro.

Each of independent claims 27 and 38 recite the limitation “replacing less than all of the first plurality of components in the first cell with less than all of the second plurality of components in the second cell”. The Examiner alleges that Naohiro discloses the above described replacing step in the Naohiro patent with reference to col. 3, lines 67 - col. 4, line 1.¹ However, Applicant respectfully submits that the Examiner is mischaracterizing the cited portion of the Naohiro patent.

Initially, Applicant notes that the cited portion of the Naohiro patent is a portion of a single sentence located in the summary of the invention section.² As will now be explained, the “switching” of Naohiro does not refer to signal replacement.

Figure 1 of Naohiro illustrates an asynchronous transfer machine (ATM) system where a signal 5-1 is distributed on a first path VP1 and a second path VP2.³ The signal 5-1 is sent along the first and second paths to a node 3. If a signal failure occurs on either of the paths, an alarm indicator is inserted into the signal.⁴ At node 3, a detection portion 5-5 detects whether an alarm indicator is present in either of the received signals on the first and second paths VP1 and VP2. If the detecting portion 5-5 detects the inserted alarm indicator, a VP switch selects the signal without the alarm indicator in order to select the better signal.⁵ Further, Naohiro states that Figure 1 illustrates the “principle of the present invention”.⁶ Figures 2-9 merely illustrate embodiments of the above-described principle.

As discussed above, an alarm indicator is inserted into a signal on the first path when the signal fails.⁷ A signal on another path (which has not failed) may not include the alarm indicator.⁸ Initially, in view of the above remarks, Applicant respectfully submits that Naohiro discloses an alarm insertion into an unused portion of bandwidth on a given path, and not a signal replacement. The alarm is only inserted on the path with the signal failure and is inserted irrespective of second path signals. If signals on both the first and second path fail, the alarm indicator is inserted on both the first and second paths. Thus, Naohiro cannot disclose or suggest “replacing less than all of the first plurality of components in the first cell

¹ See point 1 of page 2 of the Office Action mailed on July 12, 2005.

² See column 3, lines 61 – column 4, line 6 of Naohiro.

³ See column 6, lines 44-47 of Naohiro.

⁴ See column 6, lines 49-51 of Naohiro.

⁵ See column 6, lines 55-58 of Naohiro.

⁶ See column 6, lines 43-44 of Naohiro.

⁷ See column 6, lines 43-58 of Naohiro.

with less than all the second plurality of components in the second cell” as recited in independent claims 27 and 38 (Emphasis added).

The Examiner directs the Applicant to column 7, line 43-column 8, line 7 in alleging that Naohiro discloses replacing less than all of the first plurality of components in the first signal with less than all the second plurality of components in the second signal.⁹ Applicant can only assume that the Examiner is referring to the OAM multiplexer insertion.¹⁰ However, Naohiro discloses “inserting the OAM signal into the selected signal”.¹¹ The OAM signal is generated at an OAM signal generating portion 1-10 and inserted into the selected signal.¹² Thus, this embodiment does not disclose a replacement, but is rather another example of a signal insertion. At least for the reasons discussed above, Naohiro fails to disclose or suggest the “replacing” step of claims 27 and 38.

The Examiner has further stated in the Response to Arguments section of the July 12, 2005 Final Office Action that the “Examiner equates the generation of the single signal with ‘signal replacement’ since portions of a signal that are not ‘closest to normality’ are replaced with portions from another signal that are ‘closest to normality’”.¹³ As discussed above, the OAM multiplexer insertion is a simple selection of one of two input signals, the output of which is simply the better of the two signals.¹⁴ It is unclear what the Examiner alleges is being “replaced” if the worse of the two signals (e.g., the signal including the alarm indicator) is simply not output of the multiplexer. However, even assuming that the OAM multiplexer section is a “replacement” for the sake of argument, Applicant respectfully submits that the Examiner has once again misread the claims. Each of independent claims 27 and 38 recite the limitation “replacing less than all of the first plurality of components in the first cell with less than all of the second plurality of components in the second cell” where the first and second cells are each on a distinct path. In contrast, the OAM multiplexer insertion is a simple selection of one of two input signals.¹⁵ Thus, there are two input paths and the “better” signal on the two input paths is selected for insertion on the output path. Even if one

⁸ *Id.*

⁹ See page 2 of the Office Action mailed on January 28, 2005.

¹⁰ See column 7, line 66 - column 8, line 2 of Naohiro.

¹¹ See column 8, lines 1 - 2 of Naohiro.

¹² See column 7, line 66 - column 8, line 2 of Naohiro.

¹³ See page 2 of the Office Action mailed on July 12, 2005.

¹⁴ See column 7, line 66 - column 8, line 2 of Naohiro.

were to strain claim interpretation to read a multiplexer selection as a signal replacement, the input signals on the two input paths are clearly unchanged and it is only the output along the output path which may be affected by the multiplexer selection. A reading of claims 27 and 38 indicates that the “replacing” step occurs on the paths on which the first and second cells are present, and not necessarily on a third unclaimed path.

Further, the Examiner has made a number of admissions regarding the deficiencies of the Naohiro patent while maintaining the single reference 35 U.S.C. § 103(a) rejection.¹⁶ For example, the Examiner has stated that “Naohiro does not expressly disclose in the primary embodiment that the first multiplexers are a single multiplier” and “Naohiro does not expressly disclose that the user interface is an asynchronous feeder multiplexer where an asynchronous multiplexer replaces less than all of the first plurality of components in the first single with less than all of the second plurality of components in the second signal”.¹⁷ Applicant has previously argued that the Examiner’s assertion of obviousness, despite these deficiencies of Naohiro, was insufficient in that neither of these admitted deficiencies were accompanied with a justifying reference supporting the Examiner’s position of obviousness.¹⁸

The Examiner must support a factual finding with adequate evidence after an Applicant challenges a factual assertion made by the Examiner which is not efficiently noticed and/or based upon common knowledge.¹⁹ In the previous reply, Applicant argued that the Examiner’s assertion of obviousness was loosely based on the Naohiro patent as supplemented with factual assertions which the Examiner has not supported.²⁰ As specified in the MPEP §2144.04(c), it rests with the Examiner to adequately support these factual assertions upon challenge by the Applicant.²¹ For at least this additional reason, Applicant respectfully submits that the 35 U.S.C. § 103(a) rejection is improper.

In view of the above remarks, Applicant respectfully requests that the Pre-Appeal Brief Review Board find in favor of the Applicant with regard to the withdrawal of the

¹⁵ See column 7, line 66 - column 8, line 2 of Naohiro.

¹⁶ See pages 3 - page 6 of the Office Action mailed on July 12, 2005.

¹⁷ See pages 3 - 4 of the Office Action mailed on July 12, 2005.

¹⁸ See arguments made on pages 7-8 of the Reply filed on March 10, 2005.

¹⁹ See MPEP § 2144.04 (c).

²⁰ See arguments made on pages 7-8 of the Reply mailed on March 10, 2005.

²¹ See MPEP §2144.04(c).

improper 35 U.S.C. § 103(a) final rejection in view of the Naohiro patent as set forth in the July 12, 2005 Office Action.

Reconsideration and allowance of all pending claims is respectfully requested.

CONCLUSION

Accordingly, in view of the remarks, reconsideration of the objections and rejections and allowance of each of claims 27-43 in connection with the present application is earnestly solicited.

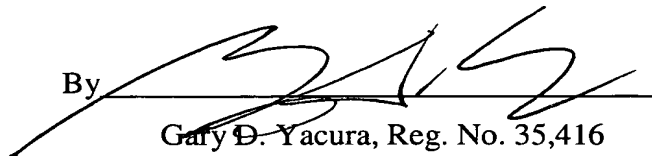
Should there be any outstanding matters that need to be resolved in the present application, the Pre-Appeal Brief Review Board is respectfully requested to contact the undersigned at the telephone number.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Very truly yours,

HARNESS, DICKEY & PIERCE, PLC

By

A handwritten signature in black ink, appearing to read 'G. Yacura', is written over a horizontal line.

Gary D. Yacura, Reg. No. 35,416

GDY/DAP/cdw

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